



## **DEPARTMENT OF THE TREASURY**

### **Financial Crimes Enforcement Network**

#### **Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, the regulations prohibit covered financial institutions from maintaining correspondent accounts for or on behalf of a foreign shell bank. The regulations require that a covered financial institution take reasonable steps to ensure that any correspondent account that it maintains in the United States for a foreign bank is not used by the foreign bank to indirectly provide banking services to a foreign shell bank. The regulations also mandate that a covered financial institution maintaining correspondent accounts in the United States for foreign banks retain records in the United States identifying: the owners of each such foreign bank whose shares are not publicly traded, unless the foreign bank files a Form FR-Y with the Federal Reserve Board identifying the current owners of the foreign bank; and the name and address of a person who resides in the United States who is authorized to serve as each such foreign bank's agent for service of legal process for records regarding each such correspondent account. Although no changes are proposed to the information collection, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments are welcome, and must be received on or before April 11, 2022

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2022-0003 and the specific Office of Management and Budget (OMB) control number 1506-0043.

- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2022-0003 and OMB control number 1506-0043.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Provisions**

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).<sup>1</sup> The BSA is codified at 12 U.S.C. 1829b, 12

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<sup>1</sup> The AML Act was enacted as Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat 3388 (2021).

U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.<sup>2</sup> Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>3</sup>

31 U.S.C. 5318(j) prohibits covered financial institutions<sup>4</sup> from maintaining correspondent accounts in the United States for, or on behalf of, foreign banks that do not have a physical presence in any country. In addition, under 31 U.S.C. 5318(k), a covered financial institution maintaining a correspondent account in the United States for a foreign bank, must retain records identifying (i) the owners of record and the beneficial owners of the foreign bank, and (ii) the name and address of a person residing in the United States who is authorized to accept service of legal process for the foreign bank. The regulations implementing 31 U.S.C. 5318(j) and 31 U.S.C. 5318(k) appear at 31 CFR 1010.630.

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<sup>2</sup> Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the AML Act added language further expanding the scope of the BSA but did not amend these longstanding purposes.

<sup>3</sup> Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

<sup>4</sup> A covered financial institution is any financial institution described in subparagraphs (A) through (G) of 31 U.S.C. 5312(a)(2), including an insured bank, as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; and a broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). 31 U.S.C. 5318(j)(1).

31 CFR 1010.630(a)(1) prohibits covered financial institutions<sup>5</sup> from establishing, maintaining, administering, or managing correspondent accounts<sup>6</sup> in the United States for, or on behalf of, foreign shell banks.<sup>7</sup> Covered financial institutions must take reasonable steps to ensure that any correspondent account managed by a covered financial institution in the United States is not being used by a foreign bank<sup>8</sup> to indirectly provide banking services to a foreign shell bank.<sup>9</sup>

31 CFR 1010.630(a)(2) implements 31 U.S.C. 5318(k) and requires covered financial institutions that maintain correspondent accounts in the United States for foreign banks to retain records in the United States identifying: (i) the owners of each such foreign bank whose shares are not publicly traded,<sup>10</sup> with one exception;<sup>11</sup> and (ii) the name and street address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process for records regarding each such account.

31 CFR 1010.630(b) clarifies that a covered financial institution will be deemed to be in compliance with the requirements of 31 CFR 1010.630(a) with respect to a

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<sup>5</sup> See 31 CFR 1010.605(e)(2) for the definition of a covered financial institution for purposes of 31 CFR 1010.630: (i) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (ii) a commercial bank or trust company; (iii) a private banker; (iv) an agency or branch of a foreign bank in the United States; (v) a credit union; (vi) a savings association; (vii) a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and (viii) a broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

<sup>6</sup> 31 CFR 1010.605(c). For purposes of 31 CFR 1010.630, a correspondent account is defined as an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

<sup>7</sup> 31 CFR 1010.605(g). Foreign shell bank means a foreign bank without a physical presence in any country.

<sup>8</sup> 31 CFR 1010.100(u). A foreign bank is defined as a bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

<sup>9</sup> 31 CFR 1010.630(a)(1)(iii) clarifies that covered financial institutions are not prohibited from providing correspondent account or banking services to a regulated affiliate.

<sup>10</sup> According to 31 CFR 1010.630(a)(2)(iii), publicly traded refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a “foreign securities authority” as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78C(a)(50)).

<sup>11</sup> According to 31 CFR 1010.630(2)(ii), a covered financial institution is not required to maintain records of the owner of a non-publicly traded foreign bank if the foreign bank is required to file with the Federal Reserve Board a Form FR-Y that identifies the current owners of the foreign bank.

foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank. FinCEN has developed an optional certification form<sup>12</sup> that includes a request to the foreign bank for the information required under 31 CFR 1010.630(a). Covered financial institutions may use the certification form to obtain the necessary information for an initial certification and a recertification.

31 CFR 1010.630(c) requires a covered financial institution to request that a foreign bank verify or correct the information provided in such bank's certification or recertification, if the covered financial institution knows, suspects, or has reason to suspect that such information is incorrect or no longer accurate. Additionally, the covered financial institution may take other appropriate measures to ascertain the accuracy of the information or obtain the correct information.

If a covered financial institution has not obtained a certification, recertification, or information needed for a certification or recertification within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution must close all such foreign bank's correspondent accounts within a commercially reasonable time, and must restrict the foreign bank's ability to execute any new transactions other than those necessary to close the account.<sup>13</sup> Furthermore, if a covered financial institution conducting an interim verification pursuant to 31 CFR 1010.630(c), has not obtained verification of the information or corrected information within 90 calendar days after the date of undertaking the interim verification, the covered financial institution must follow the same account closure procedures set out above.<sup>14</sup>

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<sup>12</sup> Available at <https://www.fincen.gov/sites/default/files/shared/Certification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf>

<sup>13</sup> 31 CFR 1010.630(d)(2).

<sup>14</sup> 31 CFR 1010.630(d)(3).

31 CFR 1010.630(d)(4) prohibits covered financial institutions from: (i) re-establishing any account closed pursuant to 31 CFR 1010.630(d); and (ii) establishing any other correspondent account with the foreign bank whose account was closed, unless the foreign bank provides the appropriate certification or recertification. 31 CFR 1010.630(d)(5) states that a covered financial institution will not be held liable for terminating a correspondent account in accordance with 31 CFR 1010.630(d).

31 CFR 1010.630(e) requires covered financial institutions to retain any original document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by a covered financial institution for purposes of complying with 31 CFR 1010.630, for at least five years after the date that a covered financial institution no longer maintains any correspondent account for such foreign bank.

## **II. Paperwork Reduction Act of 1995 (PRA)<sup>15</sup>**

Title: Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process (31 CFR 1010.630).

OMB Control Number: 1506-0043.

Report Number: Optional form - certification regarding correspondent accounts for foreign banks.

Abstract: FinCEN is issuing this notice to renew the OMB control number for regulations prohibiting covered financial institutions from maintaining correspondent accounts for foreign shell banks; and requiring covered financial institutions to maintain records concerning the owners of certain foreign banks, and agents based in the United States who have agreed to accept service of legal process for records regarding the foreign bank's correspondent accounts.

Affected Public: Businesses or other for-profit institutions.

Type of Review:

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<sup>15</sup> Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

- Renewal without change of a currently approved information collection.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the “traditional annual PRA burden”).
- Propose for review and comment a future expansion of the scope of the PRA burden (the “supplemental annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 8,696 covered financial institutions maintain correspondent accounts with foreign banks.<sup>16, 17</sup>

Estimated Recordkeeping Burden:

In Part 1, FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes a scope and methodology similar to that used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past was limited to estimating the time necessary for a covered financial institution to: (i) obtain a certification form from a foreign bank; (ii) obtain a recertification form from a foreign bank; and (iii) maintain records provided by a foreign bank for the certification or recertification. In Part 2, FinCEN proposes for review and comment a methodology to estimate the hourly burden and the cost of a future estimate of a supplemental annual PRA burden that includes the burden and cost of

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<sup>16</sup> Data are from the Federal Reserve’s Structured Data for U.S. Banking Offices (*see* FRB: Structure Data for U.S. Banking Offices of Foreign Entities ([federalreserve.gov](https://www.federalreserve.gov))) and quarterly call report bank data (specifically, Schedule RC-E: Deposit liabilities, line 5: liabilities of banks in foreign countries) from the Financial Institution Retrieval Data System (FINDRS). Using these two sources, FinCEN determines that as of Q3 2021, approximately 5,164 banking organizations (national and state banks, trusts, thrifts and savings and loans, branches and agencies of foreign banking organizations, representative offices, Edge Act corporations, and agreement corporations) will be affected by this rule on any given year. Specifically, we determine that there are approximately: 190 branches and agencies of foreign banks; 115 representative offices, Edge Act corporations, and agreement corporations; and 4,859 U.S. banks (national and state chartered, trusts, savings and loans, thrifts) that report values for deposit liabilities of banks in foreign countries. Deposit liabilities in a foreign country is an indication that a bank maintains at least one correspondent account with a foreign financial institution.

<sup>17</sup> According to the Securities and Exchange Commission (SEC), as of March 31, 2021, there were 3,532 brokers or dealers in securities registered with the SEC. FinCEN conservatively estimates that each of these brokers or dealers in securities maintain at least one correspondent account with a foreign financial institution.

(i) conducting due diligence on correspondent accounts to determine if an interim verification is warranted; (ii) conducting an interim verification; and (iii) determining if closing a correspondent account is warranted. Finally, in Part 3, FinCEN solicits input from the public about: (a) the accuracy of the estimate of the traditional annual PRA burden; (b) the additional steps proposed to be included in the future supplemental annual PRA burden; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future traditional and supplemental annual PRA burden, according to the methodology proposed; and (d) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

#### **Part 1. Traditional annual PRA burden and cost**

There are practical challenges to determining the total number of covered financial institutions that maintain correspondent accounts for foreign banks, as well as estimating the total number of correspondent accounts for foreign banks that each of those covered financial institutions maintains. In addition, there are practical challenges in estimating how many covered financial institutions need to obtain certification or recertification forms from foreign banks annually, along with estimating how often covered financial institutions need to conduct interim verifications for foreign banks for which they suspect the current information is no longer correct. Further, FinCEN cannot estimate how frequently covered financial institutions need to determine if correspondent account closure is necessary. Because of these challenges, in the past FinCEN has generally estimated the number of covered financial institutions that maintain correspondent accounts for foreign banks, and limited the burden estimate to the annual burden on covered financial institutions to obtain certification forms and recertification



forms, and maintain records of the forms and any supporting documentation provided by foreign banks.<sup>18</sup>

FinCEN estimates that the annual hourly burden for a covered financial institution to obtain and maintain an initial certification form from a foreign bank for which it maintains a correspondent account is 15 hours. This estimate covers the burden to a covered financial institution to: (i) obtain assurances from the foreign bank that it is not providing banking services, directly or indirectly, to a foreign shell bank; (ii) obtain ownership information from the foreign bank, if necessary; (iii) obtain the name of an agent based in the United States who has agreed to accept service of legal process for records regarding such correspondent account; (iv) review all documentation submitted by the foreign bank; and (v) maintain records of all documentation associated with the certification process for the foreign bank.<sup>19</sup> As noted above, FinCEN maintains an optional certification form that a covered financial institution can send to a foreign bank to obtain all of the information noted directly above, as required under 31 CFR 1010.630(a).

FinCEN estimates the annual hourly burden for a covered financial institution to obtain and maintain a recertification form from a foreign bank for which it maintains a correspondent account is also 15 hours. FinCEN believes the hourly burden estimate for a recertification is the same as for a certification because the covered financial institution can use the same certification form to reconfirm all of the information required in the initial certification.<sup>20</sup>

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<sup>18</sup> When FinCEN renewed OMB control number 1506-0043 in 2018 it estimated that there were 2,000 covered financial institutions with correspondent accounts for 9,000 foreign banks. *See* 83 FR 42555, Aug. 22, 2018.

<sup>19</sup> The estimated annual recordkeeping burden associated with certification and recertification, which requires that a covered financial institution maintain such records for five years after a foreign bank's correspondent account is closed, is incorporated within the estimates for both certification and recertification.

<sup>20</sup> When FinCEN renewed OMB control number 1506-0043 in 2018 the estimate included an annual estimate of the following three items: (i) 20 hours to complete a certification for a foreign bank; (ii) 5 hours

As noted above, a covered financial institution is required to obtain an initial certification and recertification every three years from each foreign bank for which it maintains a correspondent account. FinCEN estimates that there are approximately 8,696 covered financial institutions that maintain at least one correspondent account for a foreign bank. FinCEN is using this number to approximate the number of certifications and recertifications covered financial institutions need to conduct annually.

FinCEN does not have a way to determine the total number of correspondent accounts each covered financial institution maintains for foreign banks. In addition, there are practical challenges in estimating how often a covered financial institution needs to obtain certification or recertification forms from foreign banks annually, because certifications are only required when a new correspondent account is opened and recertifications are only required every three years. For those reasons, FinCEN estimates that each covered financial institution will conduct one certification and one recertification annually, for two of the foreign banks for which it maintains correspondent accounts. FinCEN recognizes that some covered financial institutions may only maintain a few correspondent accounts for foreign banks, while other covered financial institutions may maintain multiple correspondent accounts for foreign banks.

FinCEN's estimate of the traditional annual PRA burden, therefore, is 260,880 hours, as detailed in Table 1 below:

**Table 1 – Hourly burden for each covered financial institution to obtain one certification and one recertification annually, along with the corresponding recordkeeping burden**

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to complete a recertification for a foreign bank; and (iii) 9 hours to maintain records on the foreign bank's certification/recertification. In this notice, FinCEN has revised its estimate to incorporate the recordkeeping component of the burden estimate within the certification and recertification process. FinCEN also has revised its assessment of the time necessary to conduct a recertification, as the process is identical to a certification. For those reasons, FinCEN is estimating the burden for a certification and corresponding recordkeeping is 15 hours; and the burden for a recertification and corresponding recordkeeping is also 15 hours.

<b>Estimated Number of Covered Financial Institutions with One or More Correspondent Accounts for Foreign Banks</b>	<b>Hourly Burden to Obtain and Record a Certification or Recertification Per Foreign Bank</b>		<b>Total Burden Hours for Covered Financial Institutions to Obtain and Record Certification and Recertification Annually</b>		<b>Grand Total Annual Burden Hours for Covered Financial Institutions to Comply with 31 CFR 1010.630</b>
	<b>Certification and Recordkeeping</b>	<b>Recertification and Recordkeeping</b>	<b>Certification and Recordkeeping</b>	<b>Recertification and Recordkeeping</b>	
8,696	15 hours	15 hours	130,440	130,440	260,880

To calculate the hourly costs of the burden estimate, FinCEN identified six roles and corresponding staff positions involved in obtaining, reviewing, and maintaining certification and recertification forms from foreign banks: (i) general oversight (providing institution-level process approval); (ii) general supervision (providing process oversight); (iii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); (iv) clerical work (engaging in research and administrative review, and recordkeeping); (v) legal compliance (ensuring the certification/recertification documents are in legal compliance); and (vi) computer support (ensuring certification/recertification documents can be properly stored and retrieved electronically if desired).

FinCEN calculated the fully-loaded hourly wage for each of these six roles by using the mean wage estimated by the U.S. Bureau of Labor Statistics (BLS),<sup>21</sup> and computing an additional benefits cost as follows:

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<sup>21</sup> The U.S. Bureau of Labor Statistics, May 2020 OEWS National Industry-Specific Occupational Employment and Wage Estimates (bls.gov). The most recent data from the BLS corresponds to May 2021. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, “Table 9. Private industry workers, by major occupational group: employer costs per hour worked for employee compensation and costs as a percentage of total compensation”, available at Employer Costs for Employee Compensation Historical Tables - June 2021 (bls.gov). The ratio between benefits and wages for private industry workers is \$10.83 (hourly benefits)/\$25.80 (hourly wages) = 0.42, as of March 2021. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

**Table 2. Fully-loaded hourly wage by role and BLS job position for all financial institutions covered by this notice**

Role	BLS-Code	BLS-Name	Mean Hourly Wage <sup>22</sup>	Benefit Factor	Fully-loaded Hourly Wage
General oversight <sup>23</sup>	11-1010	Chief Executive <sup>24</sup>	\$107.12	1.42	\$152.11
General supervision	11-3031	Financial Manager	\$74.59	1.42	\$105.92
Direct supervision	13-1041	Compliance Officer	\$35.81	1.42	\$50.85
Clerical work (research, review, and recordkeeping)	43-3099	Financial Clerk	\$23.27	1.42	\$33.04
Legal compliance	23-1010	Lawyers and Judicial Law Clerks	\$85.66	1.42	\$121.64
Computer support	11-3021	Computer and Information Systems Managers	\$77.77	1.42	\$110.43

FinCEN estimates that, *in general and on average*,<sup>25</sup> each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

**Table 3. Weighted average hourly cost of foreign bank certifications/recertifications and recordkeeping**

Role	% Time	Hourly Cost
General Oversight	16.67%	\$25.35
General Supervision	16.67%	\$17.65
Direct Supervision	16.67%	\$8.48
Clerical Work	16.67%	\$5.51
Legal Compliance	16.67%	\$20.27
Computer Support	16.67%	\$18.41
<b>Equal Weighted Average Hourly Cost</b>		<b>95.67*</b>

\* \$95.67 rounded to \$96.00

<sup>22</sup> For each occupation, FinCEN took the average of reported mean hourly wage across 9 affected financial industries (as measured at the most granular NAICS code available, whether at the 2, 3, 4 or 5 digit NAICS code; see the BLS May 2020 OEWS National Industry-Specific Occupational Employment and Wage Estimates (bls.gov)).

<sup>23</sup> General oversight may include board of directors/trustees approval.

<sup>24</sup> Chief executive officer is the highest paid category in the BLS Occupational Employment Statistics. For that reason, FinCEN is conservatively estimating the highest wage rate available for its cost analysis.

<sup>25</sup> By “in general,” FinCEN means without regard to outliers (e.g., financial institutions that maintain correspondent accounts for foreign banks with complexities that are uncommonly higher or lower than those of the population at large). By “on average,” FinCEN means the mean of the distribution of each subset of the population.

The total estimated cost of the traditional annual PRA burden is \$25,044,480, as reflected in Table 4 below:

**Table 4. Total cost of traditional annual PRA burden**

Steps	Hourly Burden	Hourly Cost	Total Cost
Time taken for covered financial institutions to obtain certification requirements from foreign banks, including recordkeeping. (divided between the roles listed in Table 2)	130,440 <sup>26</sup>	\$96.00 <sup>27</sup>	\$12,522,240
Time taken for covered financial institutions to obtain recertification requirements from foreign banks, including recordkeeping. (divided between the roles listed in Table 2)	130,440 <sup>28</sup>	\$96.00 <sup>29</sup>	\$12,522,240
<b>Total cost</b>			<b>\$25,044,480</b>

## Part 2. Supplemental annual PRA burden

In the future, FinCEN intends to add a supplemental annual PRA burden calculation that will include the estimated hourly burden and cost to a covered financial institution to: (i) conduct due diligence over correspondent accounts maintained for foreign banks to determine if an interim verification is warranted; (ii) conduct an interim verification; and (iii) determine if closing a correspondent account is warranted.

As noted in Section I above, if a covered financial institution knows, suspects, or has reason to suspect that any information provided by a foreign bank in its certification or recertification is incorrect or no longer accurate, the covered financial institution must request that the foreign bank verify or correct the information. Additionally, the covered financial institution may take other appropriate measures to ascertain the accuracy of the information or obtain the correct information.

As also noted in Section I above, if a covered financial institution has not obtained a certification, recertification, or documentation of the information necessary for

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<sup>26</sup> See Table 1.

<sup>27</sup> See Table 3.

<sup>28</sup> See Table 1.

<sup>29</sup> See Table 3.

the certification or recertification within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution must close all correspondent accounts with such foreign bank within a commercially reasonable time, and restrict the foreign bank from engaging in transactions, other than transactions necessary to close the account. Additionally, if a covered financial institution needs to conduct an interim verification and has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the interim verification, the covered financial institution must follow the same account closure procedures.

On September 29, 2020, FinCEN issued a notice and request for comment on the proposed renewal without change of the due diligence programs for correspondent accounts for foreign financial institutions and for private bank accounts.<sup>30</sup> That notice included renewing the OMB control number associated with 31 CFR 1010.610 (due diligence programs for foreign financial institutions),<sup>31</sup> and outlined a future supplemental annual PRA burden calculation to include the estimated hourly burden and cost to maintain records and document compliance with the due diligence procedures and enhanced due diligence (EDD) procedures for foreign correspondent accounts.

Under 31 CFR 1010.610(a), covered financial institutions are required to establish due diligence policies, procedures, and controls that include each of the following for any correspondent account established, maintained, administered, or managed: (i) determining whether any such foreign correspondent account is subject to EDD; (ii) assessing the money laundering risks presented by each such foreign correspondent account; and (iii) applying risk-based procedures and controls to each such foreign correspondent account reasonably designed to detect and report known or suspected

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<sup>30</sup> See 85 FR 61104, Sept. 29, 2020.

<sup>31</sup> OMB control number 1506-0046.

money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

FinCEN believes that in the process of complying with 31 CFR 1010.610(a), covered financial institutions would identify instances in which an interim verification is warranted, as a result of receiving identifying information about a foreign bank for which the covered financial institution maintains a correspondent account that is no longer correct or accurate. Further FinCEN believes that the due diligence being conducted to comply with 31 CFR 1010.610(a) would be coordinated with the identification of foreign banks that have not provided the required certification, recertification, or interim verification within the required timeframes, resulting in the closure of correspondent accounts with such foreign banks consistent with 31 CFR 1010.610(d).

FinCEN assesses that the provisions of 31 CFR 1010.630 are in large part conducted in connection with the due diligence and EDD covered financial institutions conduct on foreign correspondent accounts as required by 31 CFR 1010.610. In future supplemental annual PRA burden estimates for 31 CFR 1010.610 and 31 CFR 1010.630, FinCEN will consider whether the burden estimates for these two regulatory requirements should be linked and estimated together.

FinCEN does not have the necessary information to provide a tentative estimate for these supplemental PRA hourly burdens and costs within the current notice. In addition, FinCEN does not have all the necessary information to precisely estimate the traditional annual PRA burden. For that reason, FinCEN is relying to some extent on estimates used in prior renewals of this OMB control number and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future traditional annual PRA hourly burden and cost estimates may vary significantly. FinCEN intends to conduct more granular studies of the actions included in

the proposed scope of the supplemental annual PRA burden in the near future, to arrive at more precise estimates of net BSA hourly burden and cost.<sup>32</sup> The data obtained in these studies also may result in a significant variation of the estimated traditional annual PRA burden.

Estimated Recordkeeping Burden: The average estimated annual PRA burden, measured in hours per correspondent account maintained by a covered financial institution for a foreign bank, is 15 hours per account for the purpose of fulfilling the covered financial institution's initial certification and corresponding recordkeeping obligations, and 15 hours per account for the purpose of fulfilling the covered financial institution's recertification and recordkeeping requirements every three years.

Estimated Number of Respondents/Responses: 8,696 covered financial institutions maintain correspondent accounts for foreign banks.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 260,880 hours, as set out in Table 1.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$25,044,480, as set out in Table 4.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

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<sup>32</sup> Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2). For example, depending on the nature of the correspondent account, a covered financial institution may be collecting and maintaining some of the same information on the foreign bank correspondent account holder as is required by 31 CFR 1010.630, in order to satisfy other obligations including: (i) protecting the financial institution from fraud against itself or its customers; (ii) complying with other non-BSA regulatory requirements such as those imposed by the specific Federal functional regulator; or (iii) improving the financial institution's marketing efforts, or the credit analysis of any lending facilities granted to the foreign bank.



### **Part 3 – Request for Comments**

*a) Specific request for comments on the traditional annual PRA hourly burden and cost.*

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 1 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational levels of the covered financial institution engaged in each portion of the burden, their estimated hourly remuneration, and the estimated proportion of participation by each role. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

*b) Specific request for comments on the proposed criteria for determining the scope of a supplemental annual PRA hourly burden and cost estimate.*

FinCEN invites comments on any aspect of the criteria for a future estimate of the supplemental annual PRA burden, as set out in Part 2 of this notice.

*c) Specific request for comments on the appropriate criteria and methodology required to obtain information to more precisely estimate the supplemental annual PRA hourly burden and cost.*

FinCEN invites comments on the most appropriate and comprehensive way to ask covered financial institutions about the annual hourly burden and cost attributable solely to: (i) conducting due diligence over correspondent accounts maintained for foreign banks to determine if an interim verification is warranted; (ii) conducting an interim verification; and (iii) determining if closing a correspondent account is warranted.

The supplemental annual PRA hourly burden and cost estimate of the recordkeeping necessary to comply with identifying and conducting interim verifications, and identifying and closing correspondent accounts, as appropriate, must take into consideration only the effort involved in obtaining those data elements that are used

exclusively for complying with requirements under 31 CFR 1010.630. Given the complexity of determining what portion of the effort to include in the estimate, FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. Also, due to the evident difficulty involved in estimating: (i) the total number of covered financial institutions that maintain correspondent accounts for foreign banks; (ii) the number of such correspondent accounts per covered financial institution; and (iii) the frequency of certifications, recertifications, interim verifications, and account closures per covered financial institution, FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available information.

*d) Specific questions for comment associated with certification and recertification of foreign banks' records:*

- Correspondent Accounts for Foreign Banks
  - On average, how many correspondent accounts does your financial institution maintain for foreign banks?
  - Is compliance with 31 CFR 1010.630 conducted in conjunction with your financial institution's overall due diligence over correspondent accounts for foreign financial institutions, as required by 31 CFR 1010.610?
  - On average, of the correspondent accounts maintained by your financial institution for foreign banks, how many are not publicly traded or do not file a Form FR-Y7 with the Federal Reserve?
  - What steps does your financial institution take to ascertain whether a foreign bank is publicly traded or has filed a Form FR-7?
  - Does your financial institution have a process to track correspondent accounts for foreign banks for reasons other than to comply with the BSA requirements?

- Certification and Recertification Procedures
  - Does your financial institution obtain an initial certification during customer onboarding of a foreign bank?
  - Does your financial institution open a correspondent account for a foreign bank, if it fails to provide the information required as part of the initial certification form at the time of onboarding?
  - Does your financial institution track when foreign banks are required to recertify?
  - Does your financial institution require foreign banks to certify or recertify as part of the periodic review or EDD process, as required under 31 CFR 1010.610?
  - At what point prior to the due date of the recertification does your financial institution request recertification from a foreign bank?
  - Does your financial institution obtain recertification more often than every three years?
  - Does your financial institution use the sample certification form provided by FinCEN, or does your financial institution use a bespoke form or other method to obtain a statement of certification?
  - On average, how long does it take your financial institution to obtain certification or recertification from a foreign bank for which you maintain a correspondent account?
  - On average, how long does it take your financial institution to review the information provided by a foreign bank as part of its certification or recertification?

- Does senior management play a role in reviewing the information that your financial institution obtains from foreign bank(s) as part of certification or recertification?
- Interim Verification
  - If your financial institution has reason to suspect that the information provided by a foreign bank in its certification or recertification is incorrect, what steps are taken by your financial institution to obtain the correct information?
  - If it is determined by your financial institution that the information obtained for a foreign bank during the certification or recertification is incorrect, is senior management notified?
  - What steps are taken by the financial institution with respect to the foreign bank's correspondent account if the correct information cannot be obtained?
  - On average, on an annual basis, how many interim verifications does your financial institution need to conduct, because it suspects a foreign bank's current certification information is no longer correct? How long does the process take?
- Account Closure
  - Are there instances where a foreign bank wishes to reestablish a correspondent banking relationship with your financial institution after the foreign bank's account was closed due to a failure to certify or recertify?
  - Does your financial institution have a review and approval process involving senior management to close a foreign bank's correspondent account if it fails to certify or recertify?

*e) General request for comments.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Himamauli Das,**  
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